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June 7, 2006

MICHAEL J. HUGHES  
(1922-1999)

Ms. Kate Whitney  
Administrator  
Montana Public Service Commission  
1701 Prospect Avenue  
PO Box 202601  
Helena, MT 59620-2601

RE: Joint Application in Compliance With Consent Order and Required Notification

Dear Ms. Whitney:

Enclosed please find an original and ten copies of the Joint Application in Compliance with Consent Order and Required Notification submitted jointly by NorthWestern Corporation ("NorthWestern") and Babcock and Brown Infrastructure Limited ("BBIL"), BBI US Holdings Pty Ltd, BBI Holdings II Corp. and BBI Glacier Corp. The Application seeks any and all Commission consents or authorizations necessary for BBIL's acquisition of all of the common stock of NorthWestern, and the related assumption of its debt, under an Agreement and Plan of Merger.

One copy has been provided to the Montana Consumer Counsel. Additional copies are available for distribution to other individuals and parties as the Montana Public Service Commission's official service list in this docket is established.

The NWE representative responsible for receiving questions concerning this application or for inquiries to the appropriate members of the Utility Staff is:

Pat Corcoran  
NorthWestern Energy  
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Butte, MT 59701  
(406) 497-2202  
[pat.corcoran@northwestern.com](mailto:pat.corcoran@northwestern.com)


Applicant's attorney in this matter is:

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Whitney Letter  
June 7, 2006  
Page 2 of 2

Please add the listed NorthWestern and BBIL representatives listed on the attached Service List to the Commission's official service list in this docket to receive copies of all documents.

Sincerely,

  
John Alke by 

Enclosures

cc: Montana Consumer Counsel

**DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA**

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In the Matter of the Joint Application in  
Compliance with Consent Order and  
Required Notification of NorthWestern  
Corporation and Babcock & Brown  
Infrastructure Limited, BBI US Holdings  
Pty Ltd., BBI US Holdings II Corp. and BBI  
Glacier Corp. pursuant to Commission Order

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**JOINT APPLICATION IN  
COMPLIANCE WITH CONSENT  
ORDER AND REQUIRED  
NOTIFICATION**

**Docket No.** \_\_\_\_\_

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**NORTHWESTERN CORPORATION**

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DATED: June 7, 2006

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**DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA**

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In the Matter of the Joint Application in  
Compliance with Consent Order and  
Required Notification of NorthWestern  
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Infrastructure Limited, BBI US Holdings  
Pty Ltd., BBI US Holdings II Corp. and BBI  
Glacier Corp. pursuant to Commission Order

**JOINT APPLICATION IN  
COMPLIANCE WITH CONSENT  
ORDER AND REQUIRED  
NOTIFICATION**

**Docket No.** \_\_\_\_\_

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**A.     INTRODUCTION**

This “Joint Application in Compliance with Consent Order and Required Notification” (“Application”) is submitted jointly by NorthWestern Corporation (“NorthWestern”) and Babcock and Brown Infrastructure Limited (“BBIL”), BBI US Holdings Pty Ltd, BBI US Holdings II Corp. and BBI Glacier Corp. (together with NorthWestern referred to as “Joint Parties”). The Application seeks any and all Commission consents or authorizations necessary for BBIL’s acquisition of all of the common stock of NorthWestern, and the related assumption of its debt, under an Agreement and Plan of Merger (“Merger Agreement”), which is attached as Appendix 1 to this Application.

While in bankruptcy, on July 8, 2004, NorthWestern entered into a Stipulation and Settlement Agreement with this Commission and the Montana Consumer Counsel (“Settlement Agreement”) associated with NorthWestern’s plan of reorganization under Federal bankruptcy laws. The Settlement Agreement included the entry by the Commission of what was denominated a Consent Order.<sup>1</sup> Under Ordering Paragraph C.1.b of the Consent Order, NorthWestern agreed to provide forty-five day written notification to the Commission of any

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<sup>1</sup> Order No. 6505e, Docket No. D2003.8.109, service date September 2, 2004.

irrevocable commitment to merge with another company, such as it intends to do under the Merger Agreement. This Application constitutes the agreed upon written notification and compliance with the terms of the Consent Order and Settlement Agreement.

The Merger Agreement will also be the subject of review by the Federal Energy Regulatory Commission (“FERC”), the South Dakota Public Utilities Commission (“SDPUC”) and the Nebraska Public Service Commission (“NPSC”), among others. Copies of the related filings by the Joint Parties with these agencies will be promptly submitted to the Commission for its information.

For the reasons stated more fully herein, the Joint Parties firmly believe that they have demonstrated that this Merger Agreement complies with the Settlement Agreement and Consent Order, and should thus be found by this Commission to be in the public interest and consent to the Merger Agreement submitted herein should be promptly issued.

## **B. JOINT PARTIES**

### **1. NorthWestern Corporation**

NorthWestern is a Delaware corporation and a diversified energy company with a portfolio of natural gas and electric businesses, both regulated and non-regulated. NorthWestern supplies, delivers and processes energy, electricity and natural gas in the upper Midwest and Northwest, serving more than 628,500 customers in Montana (including limited federal facilities in the Yellowstone area of Wyoming), South Dakota and Nebraska. A system map of all facilities is attached as Appendix 2.

#### **a. NorthWestern’s Montana Electric Power Operations**

The electric transmission system located within Montana consists of over 7,000 miles of transmission lines and associated terminal facilities. This expansive system serves an area of

97,540 square miles and has interconnections to five major transmission systems located in the Western Electricity Coordinating Council area, as well as one interconnection to a system that connects with the Mid-Continent Area Power Pool region.

The electric operations in Montana cover approximately 107,600 square miles, representing approximately 73 percent of Montana's land area. NorthWestern jointly owns a 500-kilovolt transmission system that transfers Colstrip generation to markets within Montana and west of Montana. NorthWestern purchases substantially all of its capacity and energy requirements from third parties, including PPL Montana and 13 qualifying facility contracts that the Montana Power Company was required to execute. NorthWestern also contracts for wind generation, gas-fired generation, seasonal base-load hydro supply, and has committed 90MW of Colstrip 4 power beginning July 1, 2007, to its Montana jurisdictional customers.

b. NorthWestern's Montana Natural Gas Operations

NorthWestern transmits natural gas in Montana from production receipt points and storage facilities to distribution points and other nonaffiliated transmission systems.

NorthWestern owns and operates three working natural gas storage fields in Montana with aggregate storage capacity of approximately 16.2 billion cubic feet and maximum aggregate working gas capacity of approximately 185 million cubic feet per day. A fourth storage field is being depleted at approximately 0.02 million cubic feet per day with approximately 60 million cubic feet of remaining reserves at the end of 2005.

c. Montana Customer Choice Service Options

NorthWestern's electric and natural gas utility operations in Montana have been restructured under Montana law into a "customer choice" system. When NorthWestern acquired the electric and natural gas transmission and distribution business of the former



Montana Power Company, the generation assets of the electric utility and the gas production assets of The Montana Power Company had already been sold to third parties. In Montana, NorthWestern acts as the default supplier of electricity and natural gas in its service territory, purchasing electricity and natural gas at wholesale for resale.

d. NorthWestern's Montana Generating Assets

NorthWestern owns no rate-based generation in Montana. However, unregulated electric operations include a 30% lease share of Colstrip Unit 4, a 740 megawatt ("MW") demonstrated-capacity coal-fired power plant in southeastern Montana.<sup>2</sup>

e. NorthWestern's Electric and Natural Gas Operations in Other States

NorthWestern operates its regulated electric utility business in South Dakota as a vertically integrated generation, transmission and distribution utility with the exclusive franchise and Commission-ordered right to serve an assigned service area. In addition, NorthWestern provides wholesale transmission of electricity to a number of South Dakota municipalities, state government agencies and agency buildings, and sales of electricity to resellers, primarily including power pool or other utilities. Most electricity supply for South Dakota customers is generated by power plants that NorthWestern jointly owns with unaffiliated parties. In addition, NorthWestern has several wholly owned peaking/standby generating units at eight locations throughout its service territory used only during peak periods.

NorthWestern transports natural gas for other gas suppliers and marketers in South Dakota and Nebraska. In South Dakota, natural gas sales are made to a number of large-volume customers delivered through the distribution system of an unaffiliated natural gas utility company.

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<sup>2</sup> NorthWestern's subsidiary, CF&B, also owns the Milltown Dam, a 3.2 MW run of river hydroelectric generation facility located near Missoula, Montana (recently retired). CF&B surrendered its FPA license effective April 10, 2006 and ceased generation of electricity as of this date.

## 2. Babcock & Brown Infrastructure Limited

BBIL, along with Babcock & Brown Infrastructure Trust (“BBIT”), form Babcock & Brown Infrastructure (“BBI”). BBI is a utility infrastructure company based in Sydney, Australia, listed on the Australian Stock Exchange (ASX:BBI) and admitted to the ASX 200 Index. BBI has a current enterprise value of approximately US\$4.9 billion and equity value of approximately US\$1.7 billion. Each share in BBIL is stapled to a unit in BBIT. Babcock & Brown Investor Services Limited, a subsidiary of Babcock & Brown Limited (ASX: BNB) (“Babcock & Brown”), is the Trustee for BBIT. BBI is rated investment grade by Moody’s Investors Service.

BBI was formerly known as Prime Infrastructure. Its principal activity is owning and managing utility and infrastructure businesses worldwide. BBI owns companies in electricity transmission and distribution, gas transmission and distribution, and transport infrastructure, and has ownership interests in thermal and renewable power generation.

BBI’s operations include the following businesses carried out in three segments: Energy Distribution, Transport Infrastructure and Power Generation.

### *a. Energy Distribution*

- Powerco, which provides electricity and gas distribution in the North Island of New Zealand and Tasmania, Australia.
- IEG, which provides natural gas and LPG transmission, distribution and supply located in the United Kingdom, the Channel Islands, Isle of Man and Portugal.
- Cross Sound Cable, a HVDC transmission cable that links the electricity grids of New York and Connecticut.

*b. Transport Infrastructure*

- Dalrymple Bay Coal Terminal, which is one of the world's largest coal export facilities serving the Bowen Basin, Queensland, Australia.
- PD Ports, the second largest port operator (by volume) and the owner of the largest port in the industrial northeast of the United Kingdom.
- WestNet Rail, a 51% equity interest in a rail infrastructure business based in Western Australia.

*c. Power Generation*

- Interests in fossil and renewable power generation assets with a gross capacity in excess of 2,000MW.

BBI's energy sector management are utility executives with an average of over 25 years experience in the electric and gas transmission and distribution business. BBI looks to each operating company to be managed locally and responsibly.

BBI is managed under long-term management agreements by Babcock & Brown Infrastructure Management Pty Limited, a subsidiary of Babcock & Brown.

Babcock & Brown has been conducting business in the U.S. utility industry for nearly 30 years. Babcock & Brown was originally founded in San Francisco, California; its global corporate headquarters moved to Sydney, Australia in October 2004. Babcock & Brown has more than 20 offices worldwide and is engaged in real estate, infrastructure, structured finance, renewables and transportation.

As in this instance and described more fully below, BBI establishes each of its investments in an Australian holding company below BBIL. In turn, for each non-Australian investment, a single purpose holding company is formed in that jurisdiction. Companies such as

BBI that operate in multiple jurisdictions often form two holding companies to segregate investments, limit the reach of unforeseen liabilities and to enable efficient tax structuring. This structure also enables expansion of the local entity independent of other parent operations and investments.

For this transaction with NorthWestern, the following companies will constitute the organizational structure:

**BBI US Holdings Pty Ltd.**

BBI US Holdings Pty Ltd. (“Holdings Pty”), is a direct wholly-owned Australian subsidiary of BBIL, that was formed to hold the equity interests in BBI US Holdings II Corp.

**BBI US Holdings II Corp.**

BBI US Holdings II Corp. (“Holdings II”), a Delaware corporation, is a wholly-owned subsidiary of Holdings Pty that was formed to hold the equity interests in BBI Glacier Corp. and, following completion of the acquisition, in NorthWestern.

**BBI Glacier Corp.**

BBI Glacier Corp. (“Glacier”), a Delaware corporation and a wholly-owned indirect subsidiary of BBIL, is a special purpose company formed to merge with and into NorthWestern. Glacier is a direct subsidiary of Holdings II, which is in turn a wholly-owned subsidiary of Holdings Pty.

None of Glacier, Holdings Pty or Holdings II has conducted any business operations other than incidental to their formation and in connection with the transactions contemplated by the merger agreement. Each was formed solely for the purpose of engaging in the merger and the transactions contemplated by the merger agreement.

### C. REASONS AND PROCESS OF MERGER

Since emerging from voluntary Chapter 11 bankruptcy protection on November 1, 2004, NorthWestern's strategy has been simple – to focus on core utility operations. The company has returned to financial stability, and it has reduced its debt to below 50% in its capital structure, enhanced operating cash flows, reduced interest expense significantly, improved credit ratings on its debt, has completed the disposition of the majority of its non-utility assets, and resolved many significant lawsuits. NorthWestern has improved investment ratings and paid dividends in 2005 and 2006. There have been no rate impacts to wholesale or retail customers as a result of bankruptcy reorganization.

In late December 2005, NorthWestern's Board of Directors directed management and its advisors to evaluate all strategic alternatives including continuing as a stand-alone company, a financial restructuring of the company, various strategic acquisitions and sale of the company. Throughout this process, the Board and senior management considered the interests of all of NorthWestern's stakeholders – customers, employees, regulators and stockholders. NorthWestern has focused in particular on ensuring that this process will have no adverse impact on the cost, reliability or quality of customer service, and that the transactions contemplated were consistent, to the extent applicable, with the Settlement Agreement, Consent Order, the Statement of Factors for Evaluating Proposals to Acquire NorthWestern Energy<sup>3</sup>, the laws of all affected jurisdictions, as well as all of those jurisdictions applicable rules and regulations.

After a thorough review and analysis of the strategic alternatives, and after consideration of final proposals, with the assistance and advice of qualified and experienced financial advisors, legal and regulatory counsel, the Board determined that a sale of the Company to BBIL on the terms set forth in the Merger Agreement is the best means of maximizing stockholder value and

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<sup>3</sup> October 19, 2004 PSC News Release and Docket No. N2004.10.166.

preserving NorthWestern's ability to provide safe, reliable, high quality and economic service to its customers.

#### **D. THE MERGER AGREEMENT**

Though in form a merger, the sale to BBIL of 100% of NorthWestern's common stock is in reality a transfer of stock ownership. The transaction allows NorthWestern to replace short-term asset recovery and hedge fund investors with one long-term infrastructure investor dedicated to utility ownership and investment with the ability and experience of accessing international capital markets to support its portfolio companies. BBIL supports and will continue the policies and practices of NorthWestern that have returned the utility to financial well-being without diminishing safe, reliable and economic service. BBIL views NorthWestern as a long-term investment that does not depend on "merger savings" through layoffs and closures or consolidation with other operations.

The form of the proposed transaction is a merger of Glacier with and into NorthWestern with NorthWestern surviving the merger as a wholly owned indirect subsidiary of BBIL. The transaction is explained more fully in Appendix 1 hereto. The following will occur in connection with the merger.

- Each share of common stock issued and outstanding immediately prior to the effective time of the merger (other than shares held directly or indirectly by NorthWestern or BBIL or any of its subsidiaries, shares held by dissenting stockholders who exercise and perfect their appraisal rights under Delaware law, restricted shares, and shares held in the disputed claims reserve) will automatically be cancelled and converted into the right to receive \$37.00 in cash, without interest and less any required withholding taxes.

- Each share of restricted common stock that is issued and outstanding immediately prior to the effective time of the merger will vest in full, become free of restrictions and will be converted into the right to receive \$37.00, without interest and less any required withholding taxes.
- Each share of common stock that is owned as treasury stock, by any subsidiaries, or by BBIL or any of its subsidiaries, immediately prior to the effective time of the merger will automatically be cancelled and retired and will cease to exist. No consideration will be delivered in exchange for those shares.
- Each share of common stock issued and outstanding and held in the disputed claims reserve immediately prior to the effective time of the merger will automatically be cancelled and converted into the right to receive \$37.00 in cash without interest and less any required withholding taxes.
- Upon the surrender to the paying agent of an original copy of an outstanding warrant to purchase shares of common stock, the paying agent will pay to such holder an amount in cash, without interest, less applicable withholding taxes, equal to the product obtained by multiplying;
  - the total number of shares of common stock issuable upon the exercise in full of such warrant, as of the effective time of the merger, by
  - the excess, if any, of \$37.00 over the exercise price per share of common stock under such warrant.
- Each deferred stock unit (representing rights based on a share of common stock) which is outstanding under the 2005 Deferred Compensation Plan for Non-Employee Directors immediately prior to the effective time of the merger will automatically be converted into

the right to receive \$37.00 per share, less any required withholding taxes, subject to the deferred stock unit from NorthWestern or the surviving corporation, as applicable. The holder of such deferred stock unit will be entitled to receive such amount at the time previously selected by such holder pursuant to the terms of any deferral election made with respect to such deferred stock unit, subject to the terms and conditions set forth in the 2005 Deferred Compensation Plan for Non-Employee directors and compliance with applicable tax law and regulations.

- Stockholders will no longer have any interest in, and will no longer be stockholders of, NorthWestern, and will not participate in any future earnings or growth.
- Each share of Glacier's common stock, par value \$.01 per share, all of which is held indirectly by BBIL, will be converted into and become one validly issued, fully paid and nonassessable share of common stock, par value \$.01 per share, of the surviving corporation and such shares will be the only outstanding shares of capital stock of the surviving corporation.
- NorthWestern's common stock will no longer be listed on NASDAQ but NorthWestern will still have publicly traded debt requiring the filing of 10-Qs and 10-Ks disclosure reports with the U.S. Securities and Exchange Commission ("SEC").

This Application seeks a Commission determination that BBIL's acquisition of the common stock of NorthWestern, and the related assumption of its debt, under the Merger Agreement, is in compliance with the Settlement Agreement and Consent Order and is, thus, in the public interest. Although for financial and organizational purposes, the form of the transaction is a merger, the operations of two active utility companies are not actually being



merged. The purpose and effect of the Merger Agreement is to allow BBIL to become the sole stockholder of NorthWestern by acquiring all of its common stock.

The Merger Agreement is structured so as to leave NorthWestern completely intact, within a larger holding company structure. In effect, the only changes to NorthWestern under the Merger Agreement are the identity of its stockholders, and the fact that its ownership will be under a holding company structure. NorthWestern's utility operations in Montana, and the Commission's regulation of those operations under Title 69 of the Montana Code Annotated, remain unchanged under the Merger Agreement.

**E. THE 2004 SETTLEMENT AGREEMENT AND CONSENT ORDER**

The Commission's entry into the Settlement Agreement, and its issuance of the Consent Order to effectuate the Settlement Agreement, was intended to protect the public interest in reliable, safe and adequate utility service at just and reasonable rates. The Commission entered into the Settlement Agreement at a time when the Commission's authority under state law was intersecting with the authority of a Federal bankruptcy court under Federal law. Neither the Settlement Agreement nor the Consent Order issued in accordance with the Settlement Agreement, expressly state that they were intended to expand, or had the effect of expanding, the jurisdiction of the Commission under Montana law but provide the context for Commission review of this merger.

The parties to the Settlement Agreement have all abided faithfully by its terms. The filing of this Application is in accordance with NorthWestern's obligations under the Settlement Agreement and in accordance with the Consent Order issued by the Commission.

## **F. SETTLEMENT AGREEMENT AND CONSENT ORDER REQUIREMENTS**

The Settlement Agreement and Consent Order requires NorthWestern to provide certain regulatory assurances to the Commission in the event of a merger or sale. By its express terms, the Settlement Agreement and Consent Order are binding upon BBIL when the merger and sale is consummated, and BBIL will abide by it, except as may otherwise be provided by Commission order. NorthWestern, under either its current ownership or the ownership of BBIL, will:

1. Make the September 30, 2006, rate filing required by Ordering Paragraph B;
2. Meet the “ring fencing” and structural and non-structural affiliate requirements set forth in Ordering Paragraph C;
3. Meet the reporting and disclosure requirements set forth in Ordering paragraph D;
4. Perform its obligations under the provisions of Ordering Paragraph E regarding the Liberty Consulting audit of its transmission and distributions facilities.

Following acceptance of the Settlement Agreement in the Consent Order, on October 18, 2004, the Commission issued a “Statement of Factors for Evaluating Proposals to Acquire NorthWestern Energy,” “that it might use to evaluate any proposals to acquire NorthWestern’s Montana operations after the utility emerges from bankruptcy.”<sup>4</sup> The guidance provided is stated to be “in the context of the bankruptcy . . .” and “is not intended to chill the advancement of any prospective purchaser . . .”<sup>5</sup> Further, a superior proposal “is likely to have a preponderance of these elements and characteristics.”

This transaction, while technically structured as a merger, is simply a change in stock ownership. Thus, NorthWestern will remain as the financially strong operating company. Since

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<sup>4</sup> October 19, 2004 PSC News Release and Docket No. N2004.10.166.

<sup>5</sup> *Id.*

bankruptcy, NorthWestern financial strength and capability has improved as shown by repeated quarterly net income and margin growth, maintenance of substantial liquidity, improved credit ratings with secured debt obtaining investment grade, and decreasing interest expenses.

NorthWestern has funded its pension plan at or above the funding forecast of 2004, which was approximately \$19 million per year through 2008. NorthWestern continues to work on completing its electric and natural gas supply portfolio through the submissions recently of plans for review and comment by the Commission. The infrastructure in Montana is sound.

NorthWestern continues to invest in capital projects which include the recent completion of the Gallatin Valley 161kV line, numerous gas transmission loop projects, and other investment activity related to the Liberty audit recommendations including pole replacement and underground replacement.

NorthWestern also invests in maintenance including the pipeline integrity management program and other Liberty audit recommendation related implementation plans including a more comprehensive approach to line clearance and other integrated maintenance practices.

NorthWestern has committed to a Montana focus of its Montana operations by having several members of senior management reside and work in Montana. Those senior managers are some of the top salaried individuals at NorthWestern. Those senior managers are responsible for energy supply, transmission, distribution, and governmental and regulatory affairs for the entire company. NorthWestern has committed to a utility focus through the sales of non-core assets. It continues to have a substantial customer focus resulting in awards for reliability and customer service. The overall senior management has over 200 years in the aggregate of energy utility management experience while those senior managers in Montana have over 100 years aggregate utility experience. NorthWestern continues to effectively function within the Montana

constitutional, statutory and regulatory framework and will continue to do so after the transaction is approved and consummated.

**G.     APPROVAL OF THE MERGER AGREEMENT**  
**IS IN THE PUBLIC INTEREST**

The approval of the Merger Agreement will be in the public interest.

BBIL is committed to a long-term, conservative utility ownership with a proven track record of owning energy distribution and transmission, and power generation companies and assets (including renewables), and will replace short-term, asset recovery and hedge fund investors. BBIL's business approach emphasizes local management, local jobs, and local growth, including investing in infrastructure replacement, transmission and power production, and the development of renewable resources. BBIL is committed to providing NorthWestern additional capital to fund further investment. As the Commission is aware, NorthWestern is exploring ways to reinforce and expand the interstate transmission grid in the Pacific Northwest and BBIL can provide new support for these efforts.

Further, current management will continue to manage and, subject to the terms of the Merger Agreement, current employees have a minimum two-year commitment and a three year benefits plan commitment. No layoffs or reductions in staffing, pension or employee levels are planned as a result of the transaction.

BBIL's acquisition of the common stock of NorthWestern, and the related assumption of its debt, leaves NorthWestern's utility operations completely intact under a holding company structure. BBIL intends to maintain long-term ownership of NorthWestern. Its ownership of NorthWestern will have no impact on the regulatory authority of the Commission, including its ratemaking authority under a cost of service standard. The Commission's ring fencing

requirements, in ordering paragraph C of the Consent Order, for NorthWestern's utility operations can be met under the BBI holding company structure. Specifically:

(1) NorthWestern will continue to maintain the ownership and control of its public utility assets, facilities, and operations;

(2) Under the BBI holding company structure, NorthWestern's public utility assets will continue to be owned and maintained in NorthWestern and apart from BBIL's ownership, risks, and operations of any other businesses it now owns or may acquire;

(3) NorthWestern will not issue new Montana utility debt except in accordance with Montana law and the rules and regulations of the Commission;

(4) NorthWestern will not pledge its Montana assets to secure the indebtedness of an affiliated company, except in accordance with Montana law and the rules and regulations of the Commission;

(5) NorthWestern will not provide loans, guarantees, advances, equity investments or working capital related to Montana operations to an affiliated company, except in accordance with Montana law and the rules and regulations of the Commission.

(6) NorthWestern will not enter into any contract with a subsidiary or an affiliate where the costs of the contract are to be recovered in utility rates paid by Montana ratepayers, except in accordance with Montana law and the rules and regulations of the Commission;

(7) NorthWestern will maintain such separate books and accounting records for its utility operations as is required by the Commission's rules and regulations and will allow the Commission reasonable access to such books and records in accordance with Montana law; and,

(8) NorthWestern will maintain its Montana Universal Benefit funds in a separate and segregated interest bearing bank account dedicated exclusively to the handling of such funds, and it will account for them as trust funds as provided for under Montana law.

Thus, NorthWestern and BBIL have agreed to a merger and sale which will protect ratepayers, enhance access to international capital markets, maintain the current level of Commission regulation, and enhance NorthWestern's ability to continue to offer safe, reliable and economic service with the expectation that such service can be further enhanced with BBIL's support, all of which is in the public interest. Neither rates nor service will be impacted as a result of this merger and sale.

#### **H. REQUEST FOR EXPEDITED APPROVAL OR ORDERING CONTESTED CASE PROCEEDINGS**

NorthWestern and BBIL believe that its Application should be expeditiously approved as in compliance with the Consent Order and in the public interest. If, however, the Commission determines to address this matter as a contested case proceeding,<sup>6</sup> NorthWestern and BBIL believe that it is essential that the Commission issue prompt notice of the pendency of the proceeding to determine who claims the right to intervene and participate in the proceeding, and to expeditiously bring this matter forward for public hearing and decision.

Further, if contested case procedures are ordered, attached to this Application as Appendix 3 is a Proposed Draft Procedural Order, consistent with Commission practice, which specifies a July 5, 2006, deadline for intervention, and culminates in a November hearing and late December Commission decision. The proposed intervals provide ample opportunity for participation by the Montana Consumer Counsel and other possible Intervenors, and abbreviated

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<sup>6</sup> Montana Administrative Procedure Act, Sections 2-4-601 et seq. MCA.

response times for the Joint Parties. Intervenor testimony addressing the Application would not be due under the proposed procedural schedule until August 18, 2006; nearly eleven weeks after the filing of the Application with its initial prepared direct testimony, as well as a significant period after all testimony is submitted but before hearings commence. The Joint Parties respectfully request that the Commission issue an order approving this Application or issue promptly a procedural order in the form and manner set forth as Appendix 3 at the first duly noticed Commission agenda meeting succeeding the receipt of this Application.

**I. INITIAL PREPARED TESTIMONY**

Attached hereto as Appendix 4 is the initial prepared direct testimony of NorthWestern and BBIL in support of its request herein.

- A. Prepared Initial Testimony of Michael J. Hanson, President and Chief Executive Officer of NorthWestern Corporation.
- B. Pre-filed Testimony of Michael M. Garland, President of BBI US Holdings II Corp. and BBI Glacier Corp.

**J. SERVICE UPON APPLICANTS**

Service upon the Joint Parties of all notices, orders, and responsive pleadings should be as follows:

For NorthWestern: John Alke  
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**K. REQUESTED ADMINISTRATIVE ACTION**

WHEREFORE, the Joint Parties seek the following administrative action from the Montana Public Service Commission;

1. Upon a review of this Application, issue an order of the Commission which:
  - (A) Determines that NorthWestern has complied with the provisions of the Consent Order;
  - (B) Consents to BBIL's acquisition of the common stock of NorthWestern, and the assumption of its debt, under the Merger Agreement;



2. Or, in the alternative, the prompt issuance of a procedural order in the manner and form attached to this Application as Appendix 2;
3. After hearing this matter in accordance with the contested case provisions of the Montana Administrative Procedure Act ("MAPA"), issuance an order of the Commission on or before December 31, 2006, which:
  - (A) Determines that NorthWestern has complied with the provisions of the Consent Order;
  - (B) Consents to BBIL's acquisition of the common stock of NorthWestern, and the assumption of its debt, under the Merger Agreement;
  - (C) Modifies the Consent Order, to the extent deemed necessary to implement the Merger Agreement.

Dated: June 7, 2006

Respectfully submitted,

**NORTHWESTERN CORPORATION**

By John Alke by Charles Ryz  
John Alke

**BABCOCK AND BROWN  
INFRASTRUCTURE LIMITED**

By Patrick Fleming by Charles Ryz  
Patrick T. Fleming

John Alke  
Hughes, Kellner Sullivan and Alke  
40 W. Lawrence, Suite A  
Helena, MT 59624

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In the Matter of the Joint Application in  
Compliance with Consent Order and  
Required Notification of NorthWestern  
Corporation and Babcock & Brown  
Infrastructure Limited, BBI US Holdings  
Pty Ltd., BBI Holdings II Corp. and BBI  
Glacier Corp. pursuant to Commission Order

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**JOINT APPLICATION IN  
COMPLIANCE WITH  
CONSENT ORDER AND  
REQUIRED NOTIFICATION**

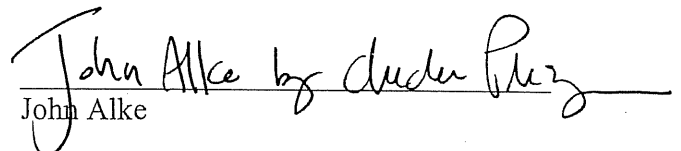
**Docket No.** \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of NorthWestern Energy's Joint Application in Compliance  
With Consent Order and Required Notification has today been served on the Montana Consumer  
Counsel by mailing a copy thereof by first class mail, postage prepaid.

Date: June 7, 2006

  
John Alke

In the Matter of the Joint Application in  
Compliance with Consent Order and  
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Glacier Corp. pursuant to Commission Order

**JOINT APPLICATION IN  
COMPLIANCE WITH  
CONSENT ORDER AND  
REQUIRED NOTIFICATION**

**Docket No.** \_\_\_\_\_

**SERVICE LIST**

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